

(2)

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 187 /2006APPELLANTS

IN JAIL

: 1) Narendra Sai, S/o Lal Sai Cherwa,
aged about 20 years,2) Ram Avtar S/o Shivrath Basodh,
aged about 19 years,Both are R/o village Sunderpur, police
station Surajpur, Distt. Surguja (C.G.)

11/09/06
09/12/06
Advocate
R. to D.R. (J)

VERSUSRESPONDENTSState of Chhattisgarh through the
Police Station Surajpur, Distt.
Surguja (C.G.)APPEAL UNDER SECTION 374 (2) OF CRIMINAL
PROCEDURE CODE

A.F.R.

27.6.06

(65)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri DILIP RAOSAHEB DESHMUKH, J.

Criminal Appeal Number-187/2006

Narendra Sai & Another

Vs.

State of Chhattisgarh

Post for Order: 27.06.06

**Sd-/
Dilip Raosaheb Deshmukh
Judge**

Noted
27/6/06
Msd
27/6/06

HIGH COURT OF CHHATTISGARH AT BILASPUR**Single Bench: Hon'ble Shri DILIP RAOSAHEB DESHMUKH, J.****Criminal Appeal Number-187/2006****Narendra Sai & Another****Vs.****State of Chhattisgarh****PRESENT: -****Shri A.K.Shukla, learned counsel for the appellants.****Shri Ashish Shukla, Govt. Advocate for the State.****J U D G M E N T****(Delivered on 27-06-2006)**

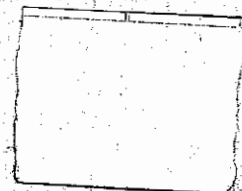
This appeal is directed against the judgment dated 15-02-2006 delivered by Shri Rajesh Shrivastava, IIInd Additional Sessions Judge, (F.T.C.), Surajpur, District-Sarguja in Sessions Case Number-67/2005 whereby the appellants were convicted under Section-450 & 376(2)(g) of the IPC and were sentenced to undergo rigorous imprisonment for 10 years and to a fine of Rs.1,000/- on each count and in default of payment of fine to undergo additional rigorous imprisonment for 1 month on each count.

2. Briefly stated the prosecution story as unfolded by the First Information Report Ex.P-3 lodged by the prosecutrix is that Devnand husband of the prosecutrix was employed in S.A.F. at Narayanpur, District-Bastar and mostly lived away from his house situated in Village-Sundarpur where the prosecutrix lived with her 3

minor children. In the intervening night of 09th & 10th November, 2004 after feeding her children, the prosecutrix was awake since there was no electricity. The children had slept. At about 1 A.M., when the electricity resumed, the prosecutrix switched the television on and opened the door to find that the appellants were standing at the door. Both the appellants caught hold of the prosecutrix and forcibly took her inside the house in a room adjacent to the bed room. The prosecutrix attempted to shout but the appellants who were holding some weapon like article in their hands threatened to kill her. After pushing the prosecutrix on the plastic mattress, the appellant Ram Avtar stood guard on the door while appellant Narendra Sai committed rape on the prosecutrix. Thereafter, the appellant Ram Avtar also committed rape on the prosecutrix while appellant Narendra Sai stood guard. Thereafter, both the appellants went away.

3. The prosecutrix immediately informed her Uncle-in-law Roop Sai PW-5 who lived adjacent to her house, her Aunt-in-law as well as her brother-in-law Gokul Prasad PW-6 about the incident. On the next day, she also told the villagers about the occurrence. There was a Panchayat in which on being confronted with the allegation of the prosecutrix, the appellants said that they had gone to the house of the prosecutrix on her invitation.

4. The prosecutrix lodged F.I.R. vide Ex.P-3 at Police Station-Surajpur situated about 15 K.M. from the village. On being sent for medical examination to Dr. Rosebeula Tirkey PW-4, no external



injuries were found on her person. The prosecutrix refused medical examination of her private parts since she was menstruating. Upon arrival of her husband, she made an application on 13-11-2004 vide Ex.P-6 for her medical examination. Dr. Rosebeula Tirkey, PW-4 examined the prosecutrix and found that vagina admitted two fingers easily and was non tender. The prosecutrix was menstruating. Secretions were taken from the posterior fornix of the vagina and two slides were prepared for chemical analysis. It was opined that she was habituated to sexual intercourse and was under menstruation. No definite opinion regarding recent sexual intercourse was given. One yellow Chaddi of the prosecutrix was also examined and was handed over to the Police with the advice of chemical analysis. The appellant Narendra Sai was examined by Dr. R.S.Singh PW-1 on 16-11-2004 and appellant Ram Avtar was examined by Dr. R.S.Jaiswal PW-2 on 01-12-2004. It was opined that both the appellants were capable of performing sexual intercourse. Report of chemical analysis of vaginal slides and chaddi of the prosecutrix was not produced during trial.

5. After completion of investigation, the appellants were prosecuted. The appellants abjured the guilt, pleaded false implication and adduced evidence of Hol Sai D.W.-1 & Anand Ram D.W.-2 who stated that the husband of the prosecutrix had seriously objected to the calling of the appellants by the prosecutrix frequently at his house during his absence and on one occasion her husband had left the prosecutrix. It was stated that the appellants were falsely implicated. The prosecution examined as many as 12



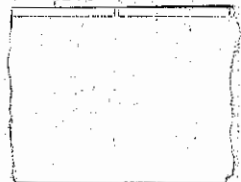
witnesses. Relying upon the testimony of the prosecutrix as worthy of credence, the learned trial Judge convicted and sentenced the appellants as aforesaid in para-1. (Supra)

6. Shri A.K.Shukla, learned counsel for the appellants argued that the prosecutrix was not a reliable witness in view of her testimony in para-22 where she contradicted the F.I.R. by stating that only appellant Narendra had raped her. Her testimony belied confidence since she refused medical examination of her private parts. It was not trustworthy since her uncle-in-law Roop Sai PW-5 had stated that she only told him that the appellants had caught hold of her. It was not substantiated since the prosecution did not produce the report of chemical analysis of the vaginal slides of the prosecutrix. It was not corroborated by medical evidence since no external injuries on her person or internal injuries on her private parts were found by Dr. Rosebeula Tirkey PW-4. Lastly, it was also argued that the appellants had gone to the house of the prosecutrix on her invitation and were falsely implicated. Reliance was placed on *Devinder Singh and others Vs. State of Himachal Pradesh* reported in 2003-A.I.R.-S.C.W.-4779, *Vimal Suresh Kamble Vs. Chaluverapinake Apal S.P. and another* reported in 2003-A.I.R.-S.C.W.-253, *Rabindranath Balliarsingh Vs. State* reported in 2000-Cr.L.J.-2535, *State of Andhra Pradesh Vs. Lankapalli Venkateswarlu* reported in A.I.R.-2000-Supreme Court-3555 and *Surjan and others Vs. State of Madhya Pradesh* reported in 2002-A.I.R.-S.C.W.-1 in support of his contentions.

On the other hand, Shri Ashish Shukla, learned Govt. Advocate has argued in support of the impugned judgment.

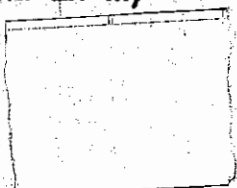
6. Having heard rival contentions, I have perused the record of Sessions Trial Number-67/2005. It is now well settled by a catena of decisions of the Apex Court that the testimony of the prosecutrix is not to be treated at par with that of an accomplice and conviction on the sole testimony of the prosecutrix is permissible where such testimony is natural, inspires confidence and is worthy of credence. It is also well settled that where the testimony of the prosecutrix is of the aforesaid quality corroboration from medical evidence may be sought as a rule of prudence but not as a rule of law. Bearing the above legal touchstone in mind, I shall now proceed to scan the testimony of the prosecutrix.

7. Prosecutrix deposed that her husband who was working in S.A.F. at Narayanpur, District-Bastar and mostly used to be away from the village where she lived with her 3 minor children. On the date of occurrence, after her children had food and went to sleep, she was watching television. Thereafter, after switching of television as she stepped out of the house to attend a call of nature the appellant Narendra caught hold of her, and gagged her mouth and dragged her inside the house. At this juncture, the lights went off. She had not seen the appellant Ram Avtar till that moment. She was wearing only the upper part of the Salwar Suit. The appellant Narendra forcibly pushed her on the soft plastic mattress and lifted one of her legs with hand and pressed her breast with another.



Thereafter, the appellant Narendra Sai committed rape on her. While she was struggling to free herself, she found that the appellant was carrying some hard iron like substance in his hand and threatened to assault if she shouted. After committing sexual intercourse with her, the appellant Narendra Sai went outside and appellant Ram Avtar immediately came inside the room and while he was committing rape on her, the lights came and she saw the appellant Ram Avtar committing rape on her. After committing rape, the appellant Ram Avtar and the appellant Narendra Sai who stood at the door, ran away. She started crying which awakened her minor children ~~son~~ Dinesh aged 12 years, Ramesh 8-9 years and Aarti 10-11 years. Seeing her cry, her children also started crying. Thereafter, the prosecutrix sent Dinesh to the house of Roop Sai, her Uncle-in-law and on his arrival narrated the incident to him. Though the prosecutrix was highly agitated, Roop Sai PW-5 suggested that he would look into the matter early in the morning. On the next day, the prosecutrix informed the villagers and father of the appellant Narendra Sai and the elder brother of the appellant Ram Avtar about the occurrence. On being asked by the villagers, the appellants stated that they had gone to the house of the prosecutrix on her invitation. Upon this, the prosecutrix returned home crying and ultimately went to Police Station-Surajpur at a distance of 15 kilometers north and lodged F.I.R. Ex.P-3 at 10.30 A.M. on 10-11-2004.

8. I have perused the testimony of the prosecutrix minutely. She has stood the test of a very rigorous cross examination. In my



considered opinion, the testimony of the prosecutrix inspires confidence and is wholly natural and worthy of credence. Heavy reliance was placed by the learned counsel for the appellants on para-22 of the testimony of the prosecutrix wherein she had stated that she did not mention at the time of lodging F.I.R. Ex.P-3 that two persons i.e. Narendra Sai & Ram Avtar of her village forcibly took her inside the house and both had threatened to kill her, if she shouted. She admitted that she did not state in F.I.R. Ex.P-3 that while Narendra was committing rape on her, the appellant Ram Avtar stood guard at the door. The above testimony of the prosecutrix in para-22 cannot be read in isolation but has to be read with her testimony in examination-in-chief in para-2 & 3. The sum and substance of the testimony of the prosecutrix in para-22 is that she has reiterated her testimony in para-2 & 3 that she did not see Ram Avtar when Narendra Sai pushed her inside the house and committed rape on her since the lights went off and it was only when the second person came inside and started committing rape on her, the lights came due to which she saw that it was Ram Avtar who was committing rape on her. In my considered opinion, while the aforesaid deviation from the F.I.R. in no manner rebuts the testimony of the prosecutrix, it is a sure proof of her truthfulness while testifying before the Court. Her testimony in para-22 in no manner shows that only appellant Narendra had committed sexual intercourse on her. She has categorically stated in the same paragraph that both the appellants had committed rape on her one after the another.

10. The fact that the prosecutrix refused medical examination of her private parts on 12-11-2004 is also well justified, since the testimony of Dr. Rosebeula Tirkey PW-4 clearly shows that she was menstruating. It is also to be borne in mind that the husband of the prosecutrix was not with her at that time. It is pertinent to note that on return of her husband, she made an application on 13-11-2004 vide Ex.P-6 to get herself medically examined. Thus, refusal by the prosecutrix to get her private parts medically examined on 12-11-2004, in no manner renders her testimony unworthy of credit.

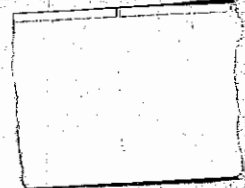
11. I have also perused the statement of Roop Sai PW-5 which was also made a ground for attack while arguing that the testimony of the prosecutrix was unworthy of credit. Roop Sai PW-5 stated that at night at about 1 A.M. Dinesh, minor son of the prosecutrix woke him and took him to his house where the prosecutrix told him that the appellants Narendra Sai & Ram Avtar were hiding in the courtyard and when she came out to attend a call of nature, both the appellants had caught hold of her. Roop Sai PW-5 stated that the prosecutrix did not tell anything more to him. It has to be borne in mind that the husband of the prosecutrix was not present at the house. It was, therefore, quite natural that to hide her shame before her uncle-in-law the prosecutrix had only narrated to him that both the appellants had caught hold of her. It has also been clearly stated by Roop Sai PW-5 that the prosecutrix was highly agitated and was determined to go to the house of the appellants to raise hue and cry, but he prevented her to do so at the dead of night



and assured to look into the matter next morning. Thus, the testimony of Roop Sai PW-5 does not render the testimony of the prosecutrix unworthy of credit in any manner. In a tradition bound and conservative society, more particularly in a rural area, the shame of sexual assault on a married woman cannot be lost sight of. It cannot be overlooked that to avoid the ignominy involved and the shame of sexual assault, the prosecutrix would not have narrated the actual incident of gang rape on her by the appellants to Roop Sai PW-5.

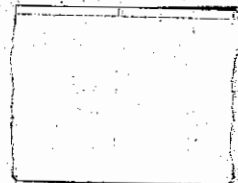
12. Gokul Prasad PW-6 who is the brother in law of the prosecutrix has also corroborated the testimony of the prosecutrix by deposing that at night the prosecutrix had told him that appellant Ram Avtar and Narendra Sai had entered her house while she came out for attending a call of nature and had outraged her modesty. He has further stated that on the next day, on being confronted with the allegations, the appellants had admitted that they had entered the house of the prosecutrix. Thus, the testimony of Gokul Prasad PW-6 which is wholly unrebutted in cross examination corroborates the testimony of the prosecutrix in para-5 that on being confronted with her allegations, the appellants had stated that they had gone to the house of the prosecutrix on her invitation.

13. It has to be borne in mind that the prosecutrix was alone with her minor children in the house while her husband was serving at Narayanpur, District-Bastar. Even if the testimony of Hol Sai DW-1 and Anand Ram DW-2 that the appellants were on visiting terms with the prosecutrix is accepted, the testimony of the prosecutrix that



the appellants had committed rape on her one after the another inside her house stands wholly un rebutted. It is well settled that even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. Therefore, the testimony of the prosecutrix cannot be discarded merely on the possibility that the appellants were on visiting terms with her. Even if the appellants used to visit the house of the prosecutrix in the absence of her husband and on the ill-fated night the appellants had gone to her house determined to satisfy their lust and to rape the prosecutrix, that by itself would not in any manner justify an inference that the prosecutrix had consented to being gang raped by the appellants which is beyond comprehension. Had she done so, she would not have been so agitated and called Roop Sai PW-5 at the dead of night to inform him about the occurrence. She would not have informed Gokul Prasad PW-6 and the villagers about the occurrence on the next day. Not only this, the prosecutrix had every reason not to go to the police Station to lodge report on the very next day since her husband was not present at the house. However, the prosecutrix after informing Roop Sai PW-5, Gokul Prasad PW-6 and the villagers immediately rushed to the Police Station-Surajpur situated at a distance of 15 K.M. north and lodged prompt F.I.R. Ex.P-3 naming both the appellants as the perpetrators of the crime.

14. Non examination of Dinesh, 12 year old son of the prosecutrix also does not render her testimony unreliable since it was only after the commission of gang rape that her minor children, hearing their mother cry woke up. The fact that in medical examination, no



external injuries were found on the prosecutrix also does not render her testimony unworthy of credit because she has clearly stated in para-14 of her testimony that the appellants had committed rape on her after pushing her on a soft plastic mattress lying on the ground. She has also stated that the appellant Narendra had threatened to kill her with some hard iron article in his hand due to which she could not shout. This also finds mention in the prompt F.I.R. lodged by her. So far as the reluctance of the prosecutrix to get medical examination of her private parts on 12-11-2004 is concerned, it is also fully explained since the prosecutrix was menstruating at that time as deposed by Dr. Rosebeula Tirkey PW-4 and her husband was not present, on whose return she herself applied on 13-11-2004 vide Ex.P-6 for her medical examination. So far as the absence of injuries on her private parts is concerned, it cannot be lost sight of that the prosecutrix was a married woman having three children and was habituated to sexual intercourse. Therefore, absence of injuries on her private parts is also well explained. The argument that the appellants were falsely implicated by the prosecutrix must be rejected in toto. Nothing has emerged in the cross examination of the prosecutrix or the defence witnesses that she bore any grudge against the appellants or had any reason to falsely implicate them. As stated above, her testimony is natural and inspires confidence.

15. Lastly, the absence of report of Forensic Science Laboratory does not render the testimony of the prosecutrix unworthy of credit. The private parts of prosecutrix, a married woman, were medically examined on 13-11-2004 by Dr. Rosebeula Tirkey PW-4 three days

after the occurrence. Therefore, the report of the chemical analysis of her vaginal slides prepared on 13-11-2004 would not have been relevant at all to establish the guilt or innocence of the appellants.

16. Having thus considered the evidence of the prosecutrix in its entirety very minutely, I am of the considered opinion that she has not only stood the rigorous test of cross examination but her testimony is very natural, inspires confidence and worthy of credence. A prompt F.I.R. lodged by the prosecutrix corroborated her testimony in all material particulars. The testimony of Roop Sai PW-5, Gokul Prasad PW-6 also corroborated the testimony of the prosecutrix. I have gone through the citations relied on by the learned counsel for the appellants which have been referred above in para-6. The facts and circumstances in those citations are clearly distinguishable and do not apply to the present case at all. The evidence led by the prosecution establishes beyond doubt that the appellants committed house trespass with intent to commit an offence punishable with imprisonment for life i.e. to gang rape the prosecutrix and thereafter committed gang rape on the prosecutrix. In this view of the matter, conviction of the appellants under Section-450 & 376(2)(g) of the IPC and the sentences awarded thereunder by the learned trial Judge are well founded and does not call for any interference.

17. A word of caution at the end. The Court must ensure that in a trial for rape, cross examination of the prosecutrix is not made a means of harassment or causing humiliation to the victim of crime.

The Court should not, while recording evidence of the victim of rape, sit as a silent spectator but must effectively control the recording of evidence of the victim of rape. In Court a woman who is a victim of sexual offence should be treated with courtesy and dignity while appearing in the Court. Scathing attack on her modesty and grueling cross examination to cause humiliation to the victim of rape must be prevented. In *State of Punjab Vs. Gurmit Singh* reported in *A.I.R. -1996-S.C.-1393*, the Apex Court had observed that:-

"There has been lately, lot of criticism of the treatment of the victims of sexual assault in the Court during their cross examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The Court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the Court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the Court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is to repeat again and again, in unfamiliar surroundings, what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as "discrepancies and contradictions" in her evidence."



18. The manner in which the learned trial Judge permitted not only the prosecution but also the defence to question the prosecutrix on the minutest details of the gang rape, it must be said that the prosecutrix must have undergone the agony and mental torture of gang rape for the second time during trial. It is the duty of the trial Judge to ensure that the prosecutrix is not subjected to a scathing attack on her modesty and to a grueling cross examination about the minutest details of gang rape, not for testing the veracity and credibility of the prosecutrix but solely for the purpose of eliciting discrepancies and minor contradictions.

19. In the result, this appeal being devoid of merit fails and is dismissed.

Sd-/
Dilip Raosaheb Deshmukh
Judge